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ALEXANDER L. STEVAS,
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NO. 80-2045

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

DONALD LYNN BILLMAN, Appellant,

v.

COLUMBUS BAR ASSOCIATION, Appellee.

ON APPEAL FROM THE SUPREME COURT OF OHIO

APPELLANT'S BRIEF OPPOSING MOTION TO DISMISS

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Cases:

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371 U.S. 415 (1963) . . . . . 4,5,8,9.

Ohralik v. Ohio State Bar Assn.
463 U.S. 447 (1978) . . . . . 4,9.

Miscellaneous:

6 Ohio Jurisprudence 3d,
Section 155, 692. . . . . 10.

APPELLANT'S BRIEF OPPOSING MOTION TO DISMISS

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

DONALD LYNN BILLMAN, the Appellant, herein submits for the Court's consideration his Brief opposing the Motion To Dismiss filed by the COLUMBUS BAR ASSOCIATION, Appellee.

JURISDICTIONAL CHALLENGE

GOVERNING THE BAR ... A MATTER OF FEDERAL CONCERN

> "It is ... important both to society and the bar itself that lawyers be unintimidated -- free to think, speak and act as members of an Independent Bar."
>
> *Konigsberg v. State Bar Of California*, 353 US 252,273 (1957).

Appellee has contended that the governing of the Bar of Ohio Lawyers is the exclusive province of the Ohio Supreme Court and "not the proper subject for review" by this Court. Such an untenable argument fails to recognize that our judicial system springs from the United States Constitution and in the scheme of jurisprudence a Lawyer's primary responsibility is to the Constitution and this Court notwithstanding whether the particular Lawyer is a member of the Bar of this Court. In the very nature of being admitted to practice before the Supreme Court it is required that an Applicant be "... of good moral and professional character ..." as is normally reflected from records received from the highest court of the State from which the applicant came, *see* Rule 5, Supreme Court Rules. Further the Ohio Supreme Court forwards to this Court and all Federal Courts copies of all disciplinary orders, *see* Rule V (20)(a), Ohio Supreme Court Rules, upon which

the Federal Courts rely.[1] The Court has a vested interest in being assured that those disciplinary orders are fairly entered.

The facts as set forth in Appellant's *Jurisdictional Statement* clearly demonstrate an intimidating effect upon a Trial Lawyer -- should the action below be permitted to stand. A Trial Lawyer will be leary of "zealously" representing a Client for fear of infuriating an opponent who will carry his vendetta to the local Bar. A Trial Lawyer will be fearful of vigorously representing Clients accused of crimes. A Trial Lawyer will be fearful of pursuing innovative legal arguments. A Trial Lawyer will be fearful of exercising his contractual rights.

APPROPRIATE FOCUS IS ON THE LAWYER'S CONDUCT

Appellee has criticized the recitation of facts concerning the Appellant Trial Lawyer

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[1] *The ramifications of Federal Courts relying upon disciplinary orders is tragically recorded in* In Re Ruffalo, *390 U.S. 544 (1968).*

however is conspicuously silent in refuting that recitation. Appellee fails to appreciate this Court's position in that regard. In *Ohralik v. Ohio State Bar Assn.*,436, US 447, 463 (1978) the Court held:

> "... the appropriate focus is on appellant's (the Lawyer's) conduct. And ... we must undertake an independent review of the record to determine whether that conduct was constitutionally protected ...".

PROTECTION AFFORDED LAWYERS

Appellee would urge the Court not to review these proceedings upon the theory that once a State has labeled a person a "Lawyer" they may do with that person as they will without regard to "rights". Such an argument is out of harmony with rulings of the Court and the basic tenants of "fundamental fairness:"

> "... a state cannot forclose the exercise of constitutional rights by mere labels."
>
> *N.A.A.C.P. v. Button*, 371 US 415,429,(1963).

> "... a State may not, under the guise of prohibiting professional misconduct, ignore constitutional rights ...".
>
> *N.A.A.C.P. v. Button, Supra,* 439.

Appellee seeks to classify the proceedings below as "investigatory, not accusatory or prosecutorial" which "are neither civil nor criminal in nature", *see* P.9, Appellee's Motion. Such a contention is as unrealistic as was Appellee's failure to recognize the motives of the accusors of this Trial Lawyer. The Court in *Konigsberg, supra,* at 257-258, addressed the nature of such proceedings:

> "While this is not a criminal case, its consequences for ... (the Lawyer) take it out of the ordinary run of civil cases. The ... action prevents him from earning a living by practicing law. This deprivation has grave consequences for a ... (Lawyer) who has spent years of study and a great deal of money in preparing to be a lawyer."

Disciplinary proceedings are in fact more devistating to a Lawyer than to a Defendant in a criminal proceeding who after serving his

sentence is permitted, with society's encouragement and support, at his election, to become a respectable member of society.[2.]

FIRST AMENDMENT ISSUE PROPERLY BEFORE THE COURT

The Appellee has contended that the Court lacks jurisdiction to review the case arguing that the First Amendment claim was not presented to the Ohio Supreme Court. A similar contention was addressed by this Court in *Konigsberg, supra,* at P. 254 wherein it was observed:

> "In considering actions of the Committee of Bar Examiners the (State) ... Supreme Court exercises original jurisdiction and is not restricted to the limited review made by an appellate court."

In supporting this holding the Court cited a decision of the California Supreme Court

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2. *In Ohio it seems that it is easier for an Individual who has earlier committed a felony to become a Lawyer, see In Re Application Of Davis, 61 Oh St 2d 371 (1980), than it is for a suspended Lawyer to be reinstated to the Practice Of Law, see In Re Reinstatement Of Hughes, 66, Oh St 2d 135 (1981). The application of the former criminal was "approved" while the application for reinstatement by the suspended Lawyer was "denied."*

discussing the relationship between that Supreme Court and its committees. The Supreme Court of Ohio has made a similar declaration of its relationship to its Board Of Commissioners in *Mahoning County Bar Assn. v. Ruffalo*, 176 Oh St. 263, at 264 (1964) which is cited by Appellant in his *Jurisdictional Statement*, at P. 33, and therefore is not restated here.

The nature of "objections" presented to the Ohio Supreme Court is that they basically are directed to "factual" matters notwithstanding that Appellant's Objections below clearly draw into issue the contention that the entire proceedings offended the Trial Lawyer's constitutional rights to "due process" and "fundamental fairness."

The objections presented to the Ohio Supreme Court was the Trial Lawyer's contention that the Bar Association was interferring with his vigorous advocacy of causes which he championed and were having a chilling effect upon his Practice. In this regard the Court has held:

> "... abstract discussion is not the only species of communication which the Constitution protects; *the First Amendment also protects vigorous advocacy, certainly of lawful ends, against governmental intrusion.*"
>
> *N.A.A.C.P. v. Button, Supra,* 429, *Emphasis supplied.*

Appellee's representation that the Ohio Supreme Court did not consider the First Amendment ramifications of this matter is unfortunate as Appellee's Counsel was present at the Oral Hearing held before the Justices of the Ohio Supreme Court on February 25, 1981. [3.] The oral argument for Appellee Bar Association was made by Ms. Ellen Fairfield during which inquiry was made of her by one of the Justices: "Does not Mr. Billman have the First Amendment Right Of Free Speech?" To which Ms. Fairfield on behalf of Appellee replied "No!"

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3. *The matter was before the full Ohio Supreme Court excepting for Chief Justice Frank D. Celebrezze who was absent.*

The Court does not have -- in this case as it did not in *Konigsberg* -- an opinion from the State Supreme Court which may have clarified many of the matters, such as the First Amendment ramifications, present here.

It cannot be gainsaid that in each of the activities done by this Trial Lawyer adequate basis exists for asserting the Constitutional Right of "Freedom Of Speech." The requisite basis as decreed by this Court in *NAACP v. Button, supra,* 442 and reaffirmed in *Ohralik v. Ohio State Bar Assn., supra,* 458 is:

> "employ(ing) constitutionally privileged means of expression to secure constitutionally guaranteed civil rights."

CONCLUSION

For these reasons, this Court is respectfully urged to overrule the Motion To Dismiss and to note probable jurisdiction of this appeal.[4.]

Respectfully submitted,

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4. *Counsel would respectfully acknowledge the printing error which exists in Appellant's Jurisdictional Statement at Page 60 -- as noted by Appellee in its Motion at Footnote No. 1, Page 3. The following line of type "... a proposition of law stated at 6 Ohio Jurisprudence 3d, Section 155,692, citing ..." was inadvertently ommitted immediately preceeding the citation of Bolton v. Marshall, 153 Oh St 250, (1950). Counsel sincerely regrets that his proof reading of the manuscript failed to note this ommission.*